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TRANSCRIPT OF RECORD

Office - Supreme Court, U.S.
FILED
MAY 6 1958
JOHN T. FEY, Clerk

UNITED STATES

COURT OF APPEALS

FIFTH CIRCUIT

No. 16851

ORLEANS PARISH SCHOOL BOARD,
Appellant,

versus

EARL BENJAMIN BUSH, ET AL.,
Appellees.

Appeal from the District Court of the United States,
Eastern District of Louisiana

(ORIGINAL RECORD RECEIVED)

U. S. COURT OF APPEALS
FILED

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

No. 3630 Civil Action

OLIVER BUSH, JR., ET AL.,

versus

ORLEANS PARISH SCHOOL BOARD, ET AL.

Appearances
Browne & Rault, Esq.,
Gerard A. Rault, Esq.,

W. Scott Wilkinson, Esq.,
Fred S. LeBlanc, Esq.,
Attorneys for Defendants - Appellant

A. P. Tureaud, Esq.,
Robert L. Carter, Esq.,
A. M. Trudeau, Jr., Esq.,
Thurgood Marshall, Esq.,
Attorneys for Plaintiffs - Appellees

APPEAL from the District Court of the United States for the Eastern District of Louisiana, to the United States Court of Appeals for the Fifth Circuit, returnable within forty (40) days from the 17th day of July, 1957 at the City of New Orleans, Louisiana.

LIST OF DOCKET ENTRIES

(Number and Title Omitted)

Date		Filings — Proceedings
1952		
Sept.	4	Flg. complaint
		Issg. summons & M. R.
	11	Flg. M.R. on summons Served on Defts.
1954		
Nov.	5	ISSUING NOTICE TO ATTORNEYS
	15	Entg. Case called and passed
	18	Issg. Notice
1955		
June	3	Flg. mtn. of defts. & ord. extending time to plead to Sept. 1, 1955 — Entd. 6/4/55 Issg. notice
Apr.	28	ISSUING NOTICE TO ATTORNEYS OF CALL
May	16	Entg. Case called and passed Issg. Notice

Date		Filings — Proceedings
Aug.	18	Flg. pltf's. mtn. for temporary injunction
		Flg. pltf's. 1st amended complt.
	31	Flg. M.R. on summons (Served Orleans Parish School Bd. thru D. Clarence Scheps on 8/30)
		Flg. M.R. on summons (Served James F. Redmond on 8/29/55)
		Flg. mtn. of Gerard A. Rault of Browne & Rault & ord. allowing same to me made counsel of record herein for defts. — Entered 9/1/55 — Issg. notice
		Flg. mtn. of defts. & ord. extending time to plead to Sept. 7, 1955 — Entd. 9/1/55 Issg. notice.
		Flg. mtn. of defts. for an extension of time & to refix hearing on preliminary inj.
Sept.	7	Entg. hearing on mtn. of defts. for an extension of time to plead & to refix hearing on preliminary inj. & ord. granting extension til Nov. 1, 1955 & further ord. granting mtn. to refix preliminary inj. hearing; said hearing fixed for Nov. 14, 1955 — Entd. 9/12/55 — Issg. notice

Date		Filings — Proceedings
Nov.	1	Flg. mtn. of State of La. to dismiss, etc.
		Flg. mtn. of defts. to dismiss and plea to the jurisdiction
		Flg. mtn. of defts. to dismiss and to strike
	10	Entg. ord. contg. mtn. for temporary injunction to be reassigned — Entd. 11/10/55 Issg. notice
	14	Flg. ord. of Circuit Judge Hutcheson designating a 3 judge court herein & certificate of District Judge annexed — Entd. 11/15/55 — Issg. notice
	15	Entg. ord. fixing case herein for hearing on Dec. 2nd, 1955 on all pending mtns. & on application for preliminary injunction — Entd. 11/16/55 — Issg. notice
	22	Order denying motion of State of La. to have Court hear the previously filed motions to dismiss and to strike prior to the hearing on the preliminary injunction. Entered 11/23/55. Issg notice.
Dec.	2	Entg. hearing on pending mtns. & on application for prel. inj.; argument & submission; counsel to have 10 days to file briefs — Entd. 12/5/55

Date		Filings — Proceedings
1 9 5 6		
Feb.	15	Flg. opinion of court per curiam
	15	Flg. opinion of court
		Flg., decree granting injunction, etc. — Entd. 2/16/56 — Issg. notice
Feb.	24	Flg. mtn. for a rehearing on behalf of State of La.
		Flg. mtn. by defts. for a new trial and for a rehearing
Mar.	8	Flg. orders of court denying mtn. of defts. for new trial & rehearing
		Entd. 3/9/56 — Issg. notice
Apr.	5	Flg. notice of appeal by deft.
		Flg. cost bond on appeal
	9	Issg. copies of notice of appeal to Tureaud, Carter & Marshall
	17	Flg. mtn. of deft. & ord. authorizing inclusion of original exhibits 18 thru 30 in record on appeal — Entd. 4/18/56 — Issg. notice
		Flg. designation of record on appeal

Date		Filings — Proceedings
May	14	Flg. mtn. of deft. & ord. extending time to file record on appeal for 50 days from May 15, 1956 — Entd. 5/15/56 — Issg. notice
June	29	Flg. mtn. & ord. that exhibits in original be included in record on appeal Entd. 6/29/56 — Issg. notice
1 9 5 7		
June	14	Flg. mtn. of deft. to vacate preliminary injunction
June	20	Flg. supersedeas bond & ord. approving same — Entd. 6/20/57
	26	Entg. hearing on mtn. of Orleans Parish School Board to vacate preliminary injunction & ord. denying same — Entd. 6/28/57 — Issg. notice
1 9 5 7		
July	5	Flg. mandate of Court of Appeals affirming judgment & deft. to pay costs.
	17	Flg. notice of appeal by deft.
	17	Flg. bost bond on appeal
	19	Issg. copies above to A. P. Tureaud, Esq.
	31	Flg. designation of record on appeal by deft.

DECREE

(Number and Title Omitted)

Filed: Feb. 15, 1956

This cause came on for hearing on motion of plaintiffs for a temporary injunction in accordance with the decree of the Supreme Court in *Brown* v. *Board of Education of Topeka,* 349 U.S. 294, and the court, having carefully considered the decision of the Supreme Court, the arguments of counsel and the record heretofore made in this cause:

IT IS ORDERED, ADJUDGED AND DECREED that the defendant, Orleans Parish School Board, a corporation, and its agents, its servants, its employees, their successors in office, and those in concert with them who shall receive notice of this order, be and they are hereby restrained and enjoined from requiring and permitting segregation of the races in any school under their supervision, from and after such time as may be necessary to make arrangements for admission of children to such schools on a racially nondiscriminatory basis with all deliberate speed as required by the decision of the Supreme Court in *Brown* v. *Board of Education of Topeka,* supra.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a bond be filed by plaintiffs herein in the sum of One Thousand Dollars ($1,000.00) for the payment of such costs and damages as may be incurred or suffered by any party who is found to be wrongfully enjoined or re-

strained, said bond to be approved by the Clerk of this Court.

(Signed) J. SKELLY WRIGHT
UNITED STATES
DISTRICT JUDGE

New Orleans, Louisiana
February 15, 1956

MOTION TO VACATE PRELIMINARY INJUNCTION

(Number and Title Omitted)

Filed: June 14, 1957

Defendant, appearing herein through undersigned counsel, moves the Court to vacate, set aside and to declare the preliminary injunction issued herein on February 15, 1956 to be null, void and without effect on the ground that plaintiffs have failed to file the bond required by the decree of this Court and by law.

(Signed) GERARD A. RAULT
Gerard A. Rault of Browne & Rault
803 American Bank Building
New Orleans, Louisiana
Attorneys for Defendant,
Orleans Parish School Board

SUPERSEDEAS BOND

UNITED STATES OF AMERICA

Filed: June 20, 1957

Know All Men by These Presents, That we Oliver Bush as principal and Constant C. Dejoie, Jr., as surety of the City of New Orleans and State of Louisiana, are held and firmly bound, jointly and severally, unto A. Dallam O'Brien, Clerk of the United States District Court for the Eastern District of Louisiana, and his successors in said office, in the sum of One thousand and no/100 Dollars, lawful money of the United States of America, for which payment well and truly to be made to the said Clerk or his successors, we bind ourselves in solido, and each of our heirs, executors, and administrators and assigns, firmly by these presents.

Sealed with our seals and dated the 18th day of June in the year of our Lord nineteen hundred and fifty seven.

Whereas, the said Oliver Bush has presented a petition to the Honorable the District Court of the United States for the Eastern District of Louisiana, praying a writ of injunction in the matter entitled EARL BENJAMIN BUSH, et al. vs. ORLEANS PARISH SCHOOL BOARD, et al., Civil Action No. 3630, and pursuant to decree of the United States District Court for the Eastern District of Louisiana, dated February 15, 1956.

Now the condition of the above obligation is, That we, the above bounden Oliver Bush and Constant C. Dejoie, Jr. will well and truly pay to the said Clerk or his successors in office, for the benefit of any and all persons interested

in said suit, all such damages as may be recovered against us, in case it should be decided that the said writ was wrongfully obtained.

(Signed) OLIVER BUSH

(Signed) C. C. DEJOIE, JR.

Signed, Sealed, and Delivered
in the presence of
(s) LILLIAN M. TIRCUIT
(s) ERNEST N. MORIAL

Approved: June 19th, 1957.
(s) J. SKELLY WRIGHT
JUDGE.

UNITED STATES OF AMERICA)
) ss.
Eastern District of Louisiana)

Personally appeared, Constant C. Dejoie, Jr. who, being duly sworn, deposes and says, that he is the surety on the within bond, that he resides in the City of New Orleans, Parish of Orleans, State of Louisiana and is worth the full sum of one thousand and no/100 ($1000.00) Dollars, over and above all of his debts and liabilities and property exempt from execution.

(Signed) C. C. DEJOIE, JR.

Subscribed and Sworn before me, this
18th day of June, 1957
(s) A. P. TUREAUD
Notary Public

HEARING ON MOTION TO VACATE PRELIMINARY INJUNCTION & ORDER DENYING SAME

MINUTE ENTRY: June 26, 1957 Wright, J:

(Number and Title Omitted)

This cause came on this day to be heard on motion of Orleans Parish School Board to vacate preliminary injunction.

Present:

A. P. Tureaud, Esq.,
Attorney for Plaintiffs

Gerard A. Rault, Esq.,
Attorney for Defendants

Argument;

IT IS ORDERED BY THE COURT that the motion of Orleans Parish School Board to vacate preliminary injunction be and the same is hereby DENIED.

(Signed) JSW

NOTICE OF APPEAL

(Number and Title Omitted)

Filed: July 17, 1957

Notice is hereby given that Orleans Parish School Board, defendant above named, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the decree denying defendant's motion to vacate the preliminary injunction, which said decree was entered herein on June 26, 1957.

(Signed) GERARD A. RAULT
GERARD A. RAULT
803 American Bank Building
New Orleans, Louisiana

Attorney for Appellant
CA 8639

DESIGNATION OF RECORD ON APPEAL TO UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

(Number and Title Omitted)

Filed: July 31, 1957

Defendant, Orleans Parish School Board, designates the following portions of the record to be contained in the record on appeal:

(1) Decree entered herein by United States District Judge J. Skelly Wright on February 15, 1956.

(2) Copy of the docket sheet of the Clerk of the United States District Court for the Eastern District of Louisiana, New Orleans Division, showing the dates all pleadings, bonds, etc. were filed herein.

(3) Motion to Vacate Preliminary Injunction filed herein by the defendant on June 14th, 1957.

(4) Bond filed herein by plaintiffs on the 20th day of June, 1957.

(5) Copy of decree of United States District Judge J. Skelly Wright denying defendant's motion to vacate the preliminary injunction entered herein on June 26, 1957.

(6) Notice of Appeal filed herein by defendant on July 18, 1957.

(7) This designation of record on appeal and the following statement of points to be relied on in this appeal.

In accordance with the provisions of Rule 75(d) of the Federal Rules of Civil Procedure, defendant makes the following concise statement of the points which it intends to rely on in this appeal:

(1) Under the provisions of Rule 65 (c) of the Federal Rules of Civil Procedure the posting of a bond is a condition precedent to the issuance of a preliminary injunction. In the instant case the decree issued by the District Court on February 15, 1956 also required the posting of such bond. No such bond was filed by plaintiffs herein until after defendant's motion to dismiss the preliminary injunction because of the plaintiffs' failure to file the necessary bond.

(2) The District Court, in failing to sustain defendant's motion to vacate the preliminary injunction because of plaintiff's failure timely to file bond, in effect allowed plaintiffs to cause a preliminary injunction to issue more than 15 months after the decree had been issued by the court, and without any evidence whatsoever before the court

as to whether or not the preliminary injunction was presently necessary.

Respectfully submitted,

(Signed) GERARD A. RAULT
Gerard A. Rault, of Browne & Rault, Attorneys for Defendant, Orleans Parish School Board, 803 American Bank Building New Orleans, Louisiana.

CLERK'S CERTIFICATE

I, A. DALLAM O'BRIEN, JR., Clerk of the United States District Court for the Eastern District of Louisiana do hereby certify that the foregoing 15 pages contain a true and correct copy of the record in the case entitled "Oliver Bush, Jr., et al. -vs- Orleans Parish School Board, et al." No. 3630 of the Civil Action Docket of this Court as made up in accordance with the Designation of contents copied herein.

Witness my hand and the seal of said court at New Orleans, La. this 24th day of August, 1957.

A. DALLAM O'BRIEN, JR., Clerk

By _____
Deputy Clerk.

(SEAL OF COURT)